IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 412 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

JAWANSING RATANSING

Appearance:

1. First Appeal No. 412 of 1992
MR HC PATEL,AGP for appellants.
MR RN SHAH for Respondents.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 23/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

1. In the present appeal, the appellants have challenged the award passed by the learned Extra Assistant Judge, Sabarkantha at Himatnagar in Land Reference Case No.842 of 1990 dated 21.12.1991. The Reference Court has partly allowed the said reference and directed the appellants to pay Rs.8,66,473/- to the respondents with 9% interest for the first year from the date of the award i.e. 26.6.1988 to 25.6.1989 and thereafter to pay the interest at the rate of 15% till the satisfaction of the award. The Reference Court also directed the appellants to pay the proportionate costs for which award is passed in favour of the respondents and to bear their own costs.

2. The brief facts giving rise to the present appeal are as under:

The Executive Engineer, Sabarkantha District (Public Health Works Division of Gujarat Water Supply and Sewerage Board), Himatnagar put up proposal before the Collector, Sabarkantha District to acquire the private land of Piplodi village, District: Sabarkantha. The said proposal was put up on 24.4.1984 and the Collector had sanctioned the said proposal on 30.4.1984. Thereafter, the Land Acquisition Officer carried out procedure to acquire the private land of village Piplodi. The Special Land Acquisition Officer declared award under section 11 of the Land Acquisition Act on 25.6.1988. As per the said award, survey nos. 12,13,14 and 15 were acquired by the Special Land Acquisition Officer and compensation was awarded at the rate of Rs. 1.10 per sq.mt. For survey nos. 12, 13 and 15, compensation at the rate of Re.1/per sq.mt. was awarded. In survey no.13, some land being waste land, compensation at the rate of Rs.0.01 per sq.mt. was awarded. Similarly, for survey no.14A also, compensation at the rate of Rs.0.01 was awarded for the waste land. The owner of survey no. 14A and 16 being dissatisfied and aggrieved by the said award passed by the Special Land Acquisition Officer in Land Acquisition Case No.26 of 1984, preferred Land Reference under section 18 of the Land Acquisition Act. In Reference Application, the claimants stated that their lands were fertile lands and inadequate compensation was awarded by the Special Land Acquisition Officer. They demanded compensation at the rate of Rs. 100/- per sq.mt. They also demanded severance charges, difference of price and interest. They also stated that their lands are situated in developed area and their land has potential value to be converted into N.A.land.

3. Before the Reference Court, the appellants filed objections at Ex.12 and raised the contention that the said Reference was false and not tenable. The present appellants also denied that the land in question had any potential value and also denied the fact that the land was fertile. The dispute was also raised by the appellants in respect of limitation and estoppel. According to the contention raised by the appellants before the Reference Court,the claimants had not produced any document at the relevant time and before the Competent Officer and, therefore, the said Reference was not tenable.

4. The Reference Court, after considering the oral as well as documentary evidence, came to the conclusion that the claimants are entitled to compensation at the rate of Rs. 35/- per sq.mt. and on that basis, calculations were made and after awarding 30% solatium and 9% interest as well as 15% interest for the second year, the award was passed by the Reference Court on 21.12.1991.

5. Learned AGP Mr. H.C.Patel has raised two contentions before us. The first contention is that the Reference Court has committed gross error in fixing the market price of Rs. 35/- per sq.mt. for the lands acquired without any documentary evidence. He has also submitted that there was no satisfactory evidence produced by the claimants before the Reference Court and the lands in question being waste land, the Reference Court committed gross error in awarding Rs. 35/- per sq.mt. being the market price of the lands acquired. Except these two contentions, no other contention is raised by Shri HC Patel.

6. Learned advocate Mr. R.N.Shah for the respondents submitted that the Reference Court has rightly appreciated the oral as well as documentary evidence produced before the Reference Court and the Reference Court has also rightly analysed the situation of the lands in question and the nature of the lands and has rightly awarded Rs. 35/- per sq.mt. being the compensation to the claimants. He submitted that no error has been committed by the Reference Court while awarding compensation at the rate of Rs 35/- per sq.mt.to the claimants.

7. We have considered the submissions of both the learned advocates advanced before us. Before the Reference Court, the claimants examined witness Jalamsinh Keshavsinh at Ex. 19. The claimants produced certified

copies of sale instances at Ex. 16 to 18. The claimants also produced maps and documents at Ex. 20 and 14/5. On the other hand, the Government produced certified copy of the sale instance at Ex. 24 and the map is produced at Ex. 13/4. Panipatraks of the lands in question are produced at Ex. 29 and 30.

8. According to the evidence of claimant Jawansinh Ratansinh Ex.15, it appears that the claimant has placed reliance on the sale instances. In his deposition, he has, in fact, not stated anything about the income from the said lands.The claimant claimed compensation at the rate of Rs. 100/- per sq.mt. before the Reference Court. The lands of the claimants are situated in village Piplodi, Taluka Himatnagar; lands bearing survey no. 14-A and 15 are situated near Sabar Dairy, GIDC and other factories. Village Piplodi is situated on the road which is in the direction of Himatnagar Ahmedabad. The said road is a national highway. According to this claimant, Piplodi is situated on the national highway. Mark 14/5 is a map which is exhibited at Ex. 32. From this map at Ex. 32, it clearly appears that the survey no.14A and 15 are situated near Himatnagar Ahmedabad road. From the said map, it also appears that the sim of village Motipura is touching survey nos. 14A and 15 of village Piplodi. The Government has also produced one map mark 23/2 which is also exhibited at Ex.33. From this map at Ex. 33, it also appears that the survey nos. 14A and 15 are situated touching Himatnagar Ahmedabad Highway. The survey nos. 14A and 15 are situated within the limits of Himatnagar Municipality. From the map Ex. 32, it appears that survey no.14A and 15 are touching the sim of village Motipura. It is also an admitted fact that Motipura area falls within the limits of Himatnagar Municipality. This claimant has stated that there was also a possibility that Himatnagar Municipality may extend its limits to include village Piplodi within its limits. However, for that, no evidence was produced by the claimants. According to this claimant, the lands in question are developing towards Motipura and GIDC and, therefore, the survey nos. 14A and 15 have potential value. Even in the cross examination of this claimant, it appears that this witness has stated that sim of Piplodi village and Motipura is touching each other and Motipura village is within the limits of Himatnagar Municipality. Therefore, village Piplodi is touching the limits of Himatnagar. In the cross examination of this claimant, it was suggested by the present appellants that there was a distance of 1 k.m. between village Piplodi and GIDC though that fact has been denied by the claimant. But one thing is very clear from the said

suggestion in the cross examination of this claimant that there is a distance of 1 k.m. between village Piplodi and GIDC and Sabar Dairy. The claimant have produced one document at Ex. 20. From this document Ex. 20, it appears that the owner of Ranu Plastic Industries had obtained Plot No.128 in the GIDC at the rate of Rs. 45/per sq.mt. Therefore, survey nos.14A and 15 are very near to GIDC and the rate of the land is Rs.65/- per sq.mt., but the lands of the GIDC have already been converted into non-agricultural land and divided into various plots. Therefore, naturally the price of the GIDC plot is higher and the lands of the claimants have remained agricultural land at the time when notification under section 4 of the Land Acquisition Act was issued, but the fact remains that the lands of the claimants are touching Himatnagar Ahmedabad National Highway. The claimants have produced three sale instances at Ex. 16 to 18. All these sale instances are relating to village Motipura and village Motipura is within the limits of Himatnagar Municipality. Ex. 16 to 18 are the sale instances of survey nos. 57 and 23 of village Motipura, but these sale instances are relating to non agricultural lands. The price of the land as per Ex.17 was Rs.96.21 per sq.mt. As per Ex.18, the price was Rs.53.83 per sq.mt. Both the sale instances at Ex.17 and 18 are of 1984.

9. Before the Reference Court, the Government produced one sale instance of Piplodi at Ex. 24. This Ex. 24 is relating to survey nos. 21,24,25, 26 and 114 sold on 5.1.1983. According to the opponent- government, as per Ex. 24, the price of the land was Rs.4.28 per sq.mt As per Panipatraks Ex. 29 and 30, it appears that the claimants were not taking crops except millet. The claimants have not led any oral evidence about the income from the lands. They have merely relied upon the sale instances to get compensation for the lands in question. Considering the demand made by the claimants at Rs.100/per sq.mt, from Ex. 20, it appears that the lands which are situated in GIDC area are converted into plots and the value of the said lands is Rs.65/- per sq.mt. The claimants lands are agricultural lands and they are very near to Sabar Dairy and GIDC and,therefore, the Reference Court considered the potential value of the lands in question being survey nos. 14A and 15. The Reference Court also considered one more aspect that the lands belonging to the claimants are touching National Highway and village Motipur which is situated within the limits of Himatnagar Municipality. Considering Ex. 17 and 18, the price of the land is Rs.96.21 and Rs. 53.83 per sq.mt.respectively. These sale instances were in

respect of non agricultural land and the lands were divided into plots. Therefore, the Reference Court observed that if the lands belonging to claimants are converted into N.A. lands, then the value of such lands would be very high. However, before conversion of the lands of the claimants into N.A.lands, they have been acquired by the Special Land Acquisition Officer. However, the fact remains that the lands of the claimants have potential value and they are situated near GIDC area and Sabar Dairy and also touching National Highway. After considering this, the Reference Court fixed the price at Rs. 35/- per sq.mt. The Reference Court also observed that if the non agricultural land had a value at the rate of Rs. 53.83 per sq.mt in the year 1984, considering the fact that in the year 1985, the price of the lands of the claimants can reasonably be fixed at Rs. 35/per sq.mt.

10. The submissions advanced by Shri HC Patel, learned AGP are that the Reference Court has not considered the actual income of the claimants derived from the lands in question and that there was no satisfactory evidence produced by the claimants and the nature of lands was waste land and not agricultural lands.

11. In light of the above discussion and considering the location of the lands in question which are near GIDC and Sabar Dairy and other factories coupled with the fact that they are touching National Highway, the Reference Court fixed the market price of the lands in question at Rs. 35/- per sq.mt. The Reference Court has not considered the income from the lands in question and there was no oral evidence led by the appellants- Govt. before the Reference court to prove that the lands in question were only waste land and not agricultural lands. According to the evidence produced by the claimants before the Reference Court, the lands in question were agricultural lands. As against that, the appellants will have to prove the fact that the lands in question were not agricultural lands, but they were waste lands. But for that, there is no evidence led by the appellants before the Reference Court. Therefore, this contention advanced by Shri HC Patel, learned AGP cannot be accepted.

12. We have perused the award passed by the Reference Court. The Reference Court has discussed the oral evidence of the claimants as well as their witness. The Reference Court has also considered two maps which were produced by the claimants as well as the appellants. The

reference Court has also considered various sale instances at Ex. 16 to 18 and 20. The Reference Court has also considered the map produced by the appellants at Mark 23/2 which was exhibited at Ex. 33. From the said map also, one fact is established that both the survey nos. 14A and 15 are situated touching Himatnagar Ahmedabad National Highway. It is also considered by the Reference Court that the lands in question are very near to Motipura village and Motipura area falls within the limits of Himatnagar Municipality. Therefore, the Reference Court has applied its mind while fixing the market price of the lands in question and also considered various sale instances and has also come to the conclusion that the lands in question have potential value. The only difference which has been pointed out by the Reference Court is that if the lands in question are converted into non agricultural land, then their price will be on higher side, but because the lands in question are agricultural lands, the price is little less. Therefore, while considering the actual price of the lands in question, the Reference Court after taking the mean of both the prices has fixed the price at Rs. 35/per sq.mt. In supportof the said conclusion, detailed reasons have been given by the Reference Court and after perusing the entire award, in our opinion, the Reference Court has not committed any error in fixing the market price at Rs. 35/- per sq.mt. We are in complete agreement with the findings of the Reference Court as there is no error committed by the Reference Court in awarding compensation to the claimants . Therefore, there is no substance in the present appeal.

13. Learned advocate Mr.R.N.Shah appearing on behalf of the respondents submitted that no doubt the Reference Court has awarded 30% solatium on the total amount of compensation to the claimants, however, he submitted that no interest has been awarded on the solatium by the Reference Court.

This question has been recently answered by the Apex Court in the case of Sunder Vs. Union of India, 2001(3) GLH 446. In para 26 of the said judgment, the Apex Court has made it clear that the claimants are entitled to interest on the total amount of compensation including solatium. In view of this, the claimants in the instant case are also entitled to interest on the amount of compensation including solatium. To be more precise, it is made clear that while awarding the total amount of compensation to the claimants, the Reference Court has awarded 30% solatium of Rs. 1,68,905/- upon which also, the claimants shall be entitled to interest as per the ratio laid down in the aforesaid judgment of

the Apex Court.

14. In view of the above discussion, there is no substance in this appeal and hence it is dismissed with no order as to costs.

(Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

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